

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

NO. 11-CR-0108-EFS-4

Plaintiff,

ORDER DENYING MOTION FOR
RECONSIDERATION OF PRISON
SENTENCE

MARTIN MURILLO-BARRIGA (4),

Defendant.

Before the Court, without oral argument, is Defendant Martin
Allo-Barriga's *pro se* Motion for Reconsideration of Prison
sentence. ECF No. 736. Defendant asks the Court to reconsider his
month prison sentence because he is a non-violent, first-time
offender who did not know the law and was not able to "act
appropriately in regards to timely admission of guilt." ECF No. 736.
Defendant also relies on the holding in *Nelson v. United States*, 555
U.S. 350 (2009), that the Sentencing Guidelines are not to be presumed
reasonable, to argue that the Court should apply the 18 U.S.C. § 3553
factors and sentence Defendant "based on [his] individual self." ECF
No. 736. Having reviewed the pleading and the file in this matter,
the Court is fully informed and denies the motion.

After a jury trial at which Defendant was found guilty of all counts, ECF No. 522. Defendant was sentenced to 200 months

1 imprisonment, and Judgment was entered. ECF No. 648. Defendant filed
2 an appeal to the Ninth Circuit Court of Appeals, which affirmed,
3 holding that sufficient evidence supported Defendant's conviction and
4 that Defendant's sentence was within this Court's discretion and was
5 not substantively unreasonable. Slip Opinion, ECF No. 720. After his
6 appeal was resolved, Defendant filed a *pro se* motion under 18 U.S.C.
7 § 3582 seeking a sentence reduction pursuant to Amendment 782 to the
8 U.S. Sentencing Guidelines. ECF No. 726. The Court denied that
9 motion, finding that Amendment 782 did not affect Defendant's
10 Guideline range. ECF NO. 729. The instant motion followed.

11 There is no legal basis for Defendant's motion for
12 reconsideration. Final judgment has been entered and the direct
13 appeal process has concluded with the Ninth Circuit affirming the
14 sentence imposed. ECF Nos. 648 & 721. At the sentencing hearing, the
15 Court articulated the nature and circumstances of the offense,
16 Defendant's history and characteristics, the available sentences, the
17 need to avoid unwarranted sentencing disparities, the applicable
18 Sentencing Guideline range, and Defendant's role in the offense.
19 Transcript of Sentencing Hearing, ECF No. 689 at 70-72. The Court
20 exercised its discretion and varied from the Guideline range of life
21 imprisonment to impose a lesser sentence of 200 months. *Id.* at 73.
22 Therefore, any argument that the Court presumed the Sentencing
23 Guideline range to be reasonable or failed to consider the 18 U.S.C.
24 § 3553 factors as they applied to Defendant individually has no merit.

25 Cognizant of Defendant's *pro se* status and the need to construe
26 his filing liberally, the Court considered whether his motion for

1 reconsideration should be construed as a motion under 28 U.S.C.
2 § 2255. However, Defendant has not alleged that the sentence imposed
3 violated the Constitution or laws of the United States, that the Court
4 lacked jurisdiction to impose the sentence, that the sentence exceeded
5 the maximum authorized by law, or "that the sentence is otherwise
6 subject to collateral attack." 28 U.S.C. § 2255(a). The Court
7 declines to construe Defendant's motion as a motion under § 2255,
8 finding that to do so would be futile.

9 Accordingly, IT IS HEREBY ORDERED: Defendant's Motion for
10 Reconsideration of Prison Sentence, ECF No. 736, is DENIED.

11 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
12 Order and provide copies to all counsel and Defendant.

13 DATED this 15th day of April 2015.

14
15 s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge